



State of Wisconsin
2013 - 2014 LEGISLATURE



LRB-2897/1 P2
MED:cjs:rs

In 1-17-13

Mon.

~~PROB~~

stay

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

and requiring the exercise
of rule-making authority

Reger

AN ACT *to repeal* 50.36 (3) (b), 50.36 (3) (c) and 50.36 (3g); *to renumber* 146.37
(1) (a); *to renumber and amend* 50.36 (1); *to amend* 50.35, 50.36 (2) (b), 50.36
(3) (a), 50.36 (3m), 50.36 (4), 50.37 (4), 146.37 (1g), 448.02 (3) (a), 448.02 (7) (a)
and (b), 448.675 (1) (a) and 448.68 (1) and (2); and *to create* 50.36 (1) (a), 50.36
(3) (am), 50.36 (3) (bm), 50.36 (3L) and 146.37 (1) (ag) of the statutes; **relating**
to: regulation of hospitals *granting rule-making authority*

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.35 of the statutes is amended to read:

50.35 Application and approval. Application for approval to maintain a hospital shall be made to the department on forms provided by the department. The

department shall permit an applicant to include in the application, as part of the hospital, any facility certified by the federal centers for medicare and medicaid services. On receipt of an application, the department shall, except as provided in

s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet the requirements established by the department. The department shall issue a

single certificate of approval for the University of Wisconsin Hospitals and Clinics

Authority that applies to all of the Authority's inpatient and outpatient hospital

facilities that meet the requirements established by the department and for which

the Authority applicant requests approval. For a free-standing pediatric teaching

hospital, the department shall issue a single certificate of approval that applies to

all of the hospital's inpatient and outpatient hospital facilities that meet the

requirements established by the department and for which the hospital requests

approval. Except as provided in s. 50.498, this approval shall be in effect until, for

just cause and in the manner herein prescribed, it is suspended or revoked. The

certificate of approval may be issued only for the premises and persons or

governmental unit named in the application and is not transferable or assignable,

except that, upon the request of a hospital, the department shall amend the hospital's

certificate of approval to include any facility certified by the federal centers for

medicare and medicaid services as being part of the hospital. The department shall

withhold, suspend, or revoke approval for a failure to comply with s. 165.40 (6) (a)

1, or 2., but, except as provided in s. 50.498, otherwise may not withhold, suspend,

or revoke approval unless for a substantial failure to comply with ss. 50.32 to 50.39

or the rules and standards adopted by the department after giving a reasonable

notice, a fair hearing, and a reasonable opportunity to comply. Failure by a hospital

1 to comply with s. 50.36 (3m) shall be considered to be a substantial failure to comply
2 under this section.

****NOTE: Regarding the change in the first sentence, should the applicant be able to include in its application *any* facility certified by CMS, or only any facility that was certified by CMS as being part of that hospital?

***NOTE: Is the reference in the second and third sentences to "requirements established by the department" still correct? Should those sentences also reference the conditions for Medicare participation, in addition to, or instead of, requirements established by the department? The second to last sentence also references "ss. 50.32 to 50.39 or the rules and standards adopted by the department." Should there be a reference there to the conditions for Medicare participation?

3 **SECTION 2.** 50.36 (1) of the statutes is renumbered 50.36 (1) (b) and amended
4 to read:

5 50.36 (1)(b) The department shall promulgate, adopt, amend and enforce such
6 rules and standards for hospitals for the construction, maintenance and operation
7 of the hospitals deemed necessary to provide safe and adequate care and treatment
8 of the patients in the hospitals and to protect the health and safety of the patients
9 and employees; and nothing contained herein shall pertain to a person licensed to
10 practice medicine and surgery or dentistry. The building codes and construction
11 standards of the department of safety and professional services shall apply to all
12 hospitals and the department may adopt additional construction codes and
13 standards for hospitals, provided to the extent that they are not lower than the
14 requirements of the department of safety and professional services. inconsistent
15 with any building codes or construction standards required by the conditions for
16 Medicare participation for hospitals.

****NOTE: The first sentence of sub. (1), under current law, gives DHS broad authority to promulgate rules for the construction, maintenance, and operation of hospitals necessary for safe and adequate care for patients and to protect patients and employees. This language was not stricken in the language provided, but I struck it because it appeared that the intent was to limit DHS's rulemaking authority strictly to critical access hospital eligibility standards and fees and procedures for capital construction and remodeling projects. Is that correct?

Note that chapter DHS 124 of the Administrative Code has some provisions addressing violations of s. 50.375, stats (emergency contraception for sexual assault victims). Is the intent to invalidate these rules as well?

****NOTE: I provided that the DSPS building codes and construction standards apply to the extent that they are not inconsistent with the Medicare conditions. Will that work?

(c) Unless otherwise specifically authorized, the department may not promulgate any rules to implement ss. 50.32 to 50.39, except for rules establishing eligibility standards for a hospital to be designated a critical access hospital, any rules necessary to implement sub. (2) (a), and the rules required under sub. (2) (b). Except for the construction codes and standards of the department of safety and professional services and except as provided in s. 50.39 (3), the department shall be the sole agency to adopt and enforce rules and standards pertaining to hospitals.

****NOTE: Here, in order to invalidate current hospital rules, I prohibited DHS from promulgating any rules pertaining to hospitals except where otherwise specifically authorized elsewhere, and for the areas specified in the instructions. Regarding capital construction and remodeling, I instead referred to sub. (2) (a) and (b). Will that work?

SECTION 3. 50.36 (1) (a) of the statutes is created to read:

50.36 (1) (a) Beginning on January 1, ²⁰¹⁶2015, except as provided in par. (b) and (c), the minimum standards that apply to hospitals are the conditions for Medicare participation for hospitals. ^{under 42 CFR 482 or, in the case of a critical access hospital, 42 CFR 485}

****NOTE: Please review this provision. I cross-referenced to pars. (b) and (c), which are created in SECTION 2, as those seemed to be exceptions to this.

SECTION 4. 50.36 (2) (b) of the statutes is amended to read:

50.36 (2) (b) The department shall promulgate rules that establish a fee schedule for its services in conducting the plan reviews under par. (a). ~~The schedule established under these rules shall set fees for hospital plan reviews in amounts that are less than the sum of the amounts required on September 30, 1995, for fees under this subsection and for fees for examination of hospital plans under s. 101.19 (1) (a), 1993 stats.~~

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1 **SECTION 5.** 50.36 (3) (a) of the statutes is amended to read:

2 50.36 (3) (a) ~~Any~~ person licensed to practice medicine and surgery under subch.
3 II of ch. 448 or podiatry under subch. IV of ch. 448 shall be afforded an equal
4 opportunity to obtain hospital medical staff privileges and may not be denied
5 hospital medical staff privileges solely for the reason that the person is an
6 osteopathic physician and surgeon or a podiatrist. Each individual hospital shall
7 retain the right to determine whether the applicant's training, experience, and
8 demonstrated competence is sufficient to justify the granting of hospital medical
9 staff privileges or is sufficient to justify the granting of limited hospital medical staff
10 privileges.

11 **SECTION 6.** 50.36 (3) (am) of the statutes is created to read:

12 50.36 (3) (am) A hospital may afford any practitioner the opportunity to be a
13 member of the medical staff, ^{and} obtain hospital medical staff privileges, or admit a
14 patient to the hospital if the membership, privilege, or admission is permitted under
15 the conditions for Medicare participation for hospitals and if the department does not
16 prohibit the membership, privilege, or admission.

****NOTE: On what basis would DHS prohibit it?

is consistent with the practitioner's
scope of practice

17 **SECTION 7.** 50.36 (3) (b) of the statutes is repealed.

18 **SECTION 8.** 50.36 (3) (bm) of the statutes is created to read:

19 50.36 (3) (bm) 1. In this paragraph, "credentialing board" has the meaning
20 given in s. 440.01 (2) (bm).

****NOTE: I added a definition here for "credentialing board."

21 2. If a hospital is required to report to the national practitioner data bank
22 operated by the federal department of health and human services a medical
23 malpractice payment or an adverse action concerning a hospital staff member and

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1 the hospital staff member is licensed or certified by the medical examining board or
2 another credentialing board, the hospital shall report that payment or action to the
3 credentialing board as soon as practicable.

9 **Ins 6-3**

****NOTE: I put this in a new paragraph because it is a different requirement from what is in current law. Note that provisions in chapter 448 *require* matters reported under s. 50.36 (3) (b), stats., to be investigated by the Medical Examining Board or Podiatry Affiliated Credentialing Board, as appropriate. Is it your intent that this requirement apply to reports made under this provision, created in the bill? Since we're now referring to other credentialing boards, should we then provide that *any* credentialing board that receives a report under this provision *must* investigate that matter as well? If so I would place such a provision in s. 440.035, stats.

4 **SECTION 9.** 50.36 (3) (c) of the statutes is repealed.

****NOTE: I repealed this provision as requested. However, note that sections 448.02 (3) (a) and (7) (a) and (b) (for the Medical Examining Board) and sections 448.675 (1) (a) and 448.68 (1) and (2) (for the Podiatry Affiliated Credentialing Board), stats., contain provisions addressing reports under this provision. Generally, these provisions provide for the appropriate board to investigate the matter, to notify the licensee of the substance of the report, and to remove certain reports from the licensee's disciplinary record. I therefore amended those provisions, as appropriate, to reflect the repeal of this provision. Is that OK?

5 **SECTION 10.** 50.36 (3g) of the statutes is repealed.

6 **SECTION 11.** 50.36 (3L) of the statutes is created to read:

7 50.36 (3L) A hospital accredited by an approved national accrediting
8 organization pursuant to 42 USC 1395bb (a) (1) is exempt from routine inspections
9 and investigations to determine compliance with and is considered to be in
10 compliance with ss. 50.32 to 50.39 and rules promulgated under ss. 50.32 to 50.39
11 The department may inspect an accredited hospital to investigate a complaint or
12 comply with the request of the federal centers for medicare and medicaid services,
13 including a request to validate the findings of the accrediting organization.

****NOTE: Will the accrediting organization necessarily be examining a hospital for compliance with every provision in ss. 50.32 to 50.39? If not, is it correct to say that hospitals are deemed to be in compliance with all of those provisions, or should it only refer to certain ones?

14 **SECTION 12.** 50.36 (3m) of the statutes is amended to read:

the requirements for hospitals

50.36 (3m) The department shall require a hospital that is accredited as a hospital by a ~~private~~ national accrediting organization pursuant to 42 USC 1395bb (a) (1) to submit to the department ~~a copy of the summary accreditation recommendation~~ ^{↑ strike ↑ strike ↑} and may require the hospital to submit to the department copies of all correspondence sent or received on or after August 30, 1989, including survey results, between the hospital and the accrediting organization. Accreditation national accrediting organization's final report finding the hospital in substantial compliance with the accrediting organization's standards. ~~Any accreditation letters, reports and related~~ ^{or other materials} ~~correspondence~~ ^{by or on behalf of a hospital} submitted to the department, except those submitted by a county mental health complex under s. 51.08, under this subsection are not subject to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the department.

***NOTE: Should the other references in this subsection to letters and correspondence be struck as well?

SECTION 13. 50.36 (4) of the statutes is amended to read:

50.36 (4) The Except as provided in sub. (3L), the department shall make or cause to be made such inspections and investigation, as are reasonably deemed necessary to obtain compliance with the ~~rules and standards~~ ^{requirements for hospitals}. It shall afford an opportunity for representatives of the hospitals to consult with members of the staff of the department concerning compliance and noncompliance with ~~rules and standards~~ ^{the requirements for hospitals}. If the department takes enforcement action against a hospital for a violation of ~~ss. 50.32 to 50.39, or rules promulgated or standards adopted under ss. 50.32 to 50.39,~~ ^{the requirements for hospitals} and the department subsequently conducts an on-site inspection of the hospital to review the hospital's action to correct the violation, the department

1 may, unless the hospital is operated by the state, impose a \$200 inspection fee on the
2 hospital.

***NOTE: I added language here because it seemed that it might be inconsistent with what is in created sub. (3L). Is that correct? Should the reference here to "rules and standards" be modified to include a reference to the conditions for Medicare participation?

3 **SECTION 14.** 50.37 (4) of the statutes is amended to read:

4 50.37 (4) Recommended to the federal health care financing administration
5 centers for medicare and medicaid services that the hospital be decertified from the
6 federal medicare program under 42 USC 1395 to 1395ccc or the federal medicaid
7 program under 42 USC 1396 to 1396r-3 for failure to meet a condition of
8 participation under the program.

9 **SECTION 15.** 146.37 (1) (a) of the statutes is renumbered 146.37 (1) (ar).

10 **SECTION 16.** 146.37 (1) (ag) of the statutes is created to read:

11 146.37 (1) (ag) "Credentialing board" has the meaning given in s. 440.01 (2)
12 (bm).

13 **SECTION 17.** 146.37 (1g) of the statutes is amended to read:

14 146.37 (1g) Except as provided in s. 153.76, no person acting in good faith who
15 participates in the review or evaluation of the services of health care providers or
16 facilities or the charges for such services conducted in connection with any program
17 organized and operated to help improve the quality of health care, to avoid improper
18 utilization of the services of health care providers or facilities or to determine the
19 reasonable charges for such services, or who participates in the obtaining of health
20 care information under subch. I of ch. 153, is liable for any civil damages as a result
21 of any act or omission by such person in the course of such review or evaluation. Acts
22 and omissions to which this subsection applies include, but are not limited to, acts
23 or omissions by peer review committees or hospital governing bodies in censuring,

1 reprimanding, limiting or revoking hospital staff privileges or notifying the medical
2 examining board ~~or~~, podiatry affiliated credentialing board, or other credentialing
3 board under s. 50.36 or taking any other disciplinary action against a health care
4 provider or facility and acts or omissions by a medical director in reviewing the
5 performance of emergency medical technicians or ambulance service providers.

***NOTE: Because of the changes to s. 50.36 that refer to notifications of other
credentialing boards I added a reference to that and a definition of credentialing board
here in the statute addressing health care services reviews. Is that OK?

6 **SECTION 18.** 448.02 (3) (a) of the statutes is amended to read:

7 448.02 (3) (a) The board shall investigate allegations of unprofessional conduct
8 and negligence in treatment by persons holding a license, certificate, or limited
9 permit granted by the board. An allegation that a physician has violated s. 253.10
10 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical certification
11 required under s. 69.18 (2) within 21 days after the pronouncement of death of the
12 person who is the subject of the required certificate or that a physician has failed at
13 least 6 times within a 6-month period to mail or present a medical certificate
14 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
15 person who is the subject of the required certificate is an allegation of unprofessional
16 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
17 12r., ~~50.36 (3) (b)~~, 609.17, or 632.715, under s. 50.36 (3) (b), 2011 stats., or under 42
18 CFR 1001.2005, shall be investigated by the board. Information contained in a
19 report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin Act 29,
20 which is not a finding of negligence or in a report filed with the board under s. 50.36
21 (3) (c), 2011 stats., may, within the discretion of the board, be used as the basis of an
22 investigation of a person named in the report. The board may require a person
23 holding a license, certificate, or limited permit to undergo and may consider the

1 results of one or more physical, mental, or professional competency examinations if
2 the board believes that the results of any such examinations may be useful to the
3 board in conducting its investigation.

****NOTE: See the notes under SECTIONS 8 and 9.

4 **SECTION 19.** 448.02 (7) (a) and (b) of the statutes are amended to read:

5 448.02 (7) (a) Within 30 days of receipt of a report under s. 50.36 (3) (c), 2011
6 stats., the board shall notify the licensee, in writing, of the substance of the report.
7 The licensee and the licensee's authorized representative may examine the report
8 and may place into the record a statement, of reasonable length, of the licensee's view
9 of the correctness or relevance of any information in the report. The licensee may
10 institute an action in circuit court to amend or expunge any part of the licensee's
11 record related to the report.

12 (b) If the board determines that a report submitted under s. 50.36 (3) (c), 2011
13 stats., is without merit or that the licensee has sufficiently improved his or her
14 conduct, the board shall remove the report from the licensee's record. If no report
15 about a licensee is filed under s. 50.36 (3) (c), 2011 stats., for 2 consecutive years, the
16 licensee may petition the board to remove any prior reports, which did not result in
17 disciplinary action, from his or her record.

****NOTE: See the note under SECTION 9.

18 **SECTION 20.** 448.675 (1) (a) of the statutes is amended to read:

19 448.675 (1) (a) The affiliated credentialing board shall investigate allegations
20 of unprofessional conduct and negligence in treatment by a licensee. Information
21 contained in reports filed with the affiliated credentialing board under s. 49.45 (2)
22 (a) 12r., 50.36 (3) (b), 609.17, or 632.715, under s. 50.36 (3) (b), 2011 stats., or under
23 42 CFR 1001.2005, shall be investigated by the affiliated credentialing board.

1 Information contained in a report filed with the affiliated credentialing board under
2 s. 50.36 (3) (c), 2011 stats., may, within the discretion of the affiliated credentialing
3 board, be used as the basis of an investigation of a person named in the report. The
4 affiliated credentialing board may require a licensee to undergo and may consider
5 the results of a physical, mental, or professional competency examination if the
6 affiliated credentialing board believes that the results of the examination may be
7 useful to the affiliated credentialing board in conducting its investigation.

****NOTE: See the notes under SECTIONS 8 and 9.

8 **SECTION 21.** 448.68 (1) and (2) of the statutes are amended to read:

9 448.68 (1) Within 30 days after receipt of a report under s. 50.36 (3) (c), 2011
10 stats., the affiliated credentialing board shall notify the licensee, in writing, of the
11 substance of the report. The licensee and the licensee's authorized representative
12 may examine the report and may place into the record a statement, of reasonable
13 length, of the licensee's view of the correctness or relevance of any information in the
14 report. The licensee may institute an action in circuit court to amend or expunge any
15 part of the licensee's record related to the report.

16 (2) If the affiliated credentialing board determines that a report submitted
17 under s. 50.36 (3) (c), 2011 stats., is without merit or that the licensee has sufficiently
18 improved his or her conduct, the affiliated credentialing board shall remove the
19 report from the licensee's record. If no report about a licensee is filed under s. 50.36
20 (3) (c), 2011 stats., for 2 consecutive years, the licensee may petition the affiliated
21 credentialing board to remove any prior reports, which did not result in disciplinary
22 action, from his or her record.

****NOTE: See the note under SECTION 9.

23 **SECTION 22. Effective date.**

1

(1) This act takes effect on January 1, 2015.

****NOTE: I added a delayed effective date for the bill to match the date provided in s. 50.36 (1). Is that OK, or will there be portions of the bill that you want to go into effect before (or after) January 1, 2015?

2

(END)

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

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SECTION 1. 50.33 (1c) of the statutes is created to read:

50.33 (1c) "Conditions for Medicare participation for hospitals" means the conditions ^{e of} for participation specified under 42 CFR 482 or, with respect to critical access hospitals, 42 CFR 485.

SECTION 2. 50.33 (3) of the statutes is created to read:

50.33 (3) "Requirements for hospitals" means all of the ^a applicable rules, standards, and requirements described ⁱⁿ for promulgated under ss. 50.32 to 50.39 that apply to hospitals, including the standards described under s. 50.36 (1) ^a (a).

***NOTE: I created this defined term to use in certain places in the statutes to have a consistent term that would capture all of the requirements that apply to hospitals, including the COP, as the COP is not contained in the statutes or rules.

SECTION 3. 50.35 of the statutes is amended to read:

50.35 Application and approval. Application for approval to maintain a hospital shall be made to the department on forms provided by the department. On receipt of an application, the department shall, except as provided in s. 50.498, issue a certificate of approval if the applicant and hospital facilities meet the requirements ~~established by the department for hospitals~~. The department shall issue a single certificate of approval for the University of Wisconsin Hospitals and Clinics Authority that applies to all of the Authority's inpatient and outpatient hospital facilities that meet the requirements ~~established by the department for hospitals~~ and for which the Authority requests approval. For a free-standing pediatric teaching hospital, the department shall issue a single certificate of approval that applies to all of the hospital's inpatient and outpatient hospital facilities that meet the requirements ~~established by the department for hospitals~~ and for which the hospital requests approval. Except as provided in s. 50.498, this approval shall be

1 in effect until, for just cause and in the manner herein prescribed, it is suspended or
2 revoked. The certificate of approval may be issued only for the premises and persons
3 or governmental unit named in the application and is not transferable or assignable.
4 The department shall withhold, suspend or revoke approval for a failure to comply
5 with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise may not
6 withhold, suspend or revoke approval unless for a substantial failure to comply with
7 ~~ss. 50.32 to 50.39 or the rules and standards adopted by the department~~ the
8 requirements for hospitals after giving a reasonable notice, a fair hearing and a
9 reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m)
10 shall be considered to be a substantial failure to comply under this section.

X
11 History: 1975 c. 413 ss. 4, 18; Stats. 1975 s. 50.35; 1989 a. 37; 1997 a. 93, 237; 2009 a. 2, 28.

SECTION 4. 50.36 (1) of the statutes is amended to read:

12 50.36 (1) Beginning on July 1, 2016, except as otherwise provided under ss.
13 50.32 to 50.39, the department shall use and enforce the conditions for Medicare
14 participation for hospitals as the minimum standards that apply to hospitals. The
15 department shall interpret the conditions for Medicare participation for hospitals
16 using guidelines adopted by the federal centers for medicare and medicaid services,
17 unless the department determines that a different interpretation is reasonably
18 necessary to protect public health and safety or to support the efficient and economic
19 operation of hospitals. The department shall may promulgate, adopt, amend, and
20 enforce such additional rules and standards ~~for hospitals~~ for the construction,
21 maintenance, and operation of the hospitals ~~deemed that the department~~
22 determines are necessary to provide safe and adequate care and treatment of the
23 hospital patients in the hospitals and, to protect the health and safety of the patients
24 and employees; and ~~nothing contained herein shall pertain to a person licensed to~~

1 ~~practice medicine and surgery or dentistry, and to support the efficient and economic~~
2 ~~operation of hospitals.~~ The building codes and construction standards of the
3 department of safety and professional services shall apply to all hospitals and the
4 ~~department may adopt additional construction codes and standards for hospitals,~~
5 ~~provided to the extent that they are not lower than the requirements of the~~
6 ~~department of safety and professional services incompatible with any building codes~~
7 ~~or construction standards required by the conditions for Medicare participation for~~
8 ~~hospitals.~~ Except for the construction codes and standards of the department of
9 safety and professional services and except as provided in s. 50.39 (3), the
10 department shall be the sole agency to adopt and enforce rules and standards
11 pertaining to hospitals.

****NOTE: I added "except as otherwise provided under ss. 50.32 to 50.39" here to
make clear that the rest of ss. 50.39 to 50.39 still do apply.

X

12 **SECTION 5.** 50.36 (1m) of the statutes is created to read:

13 50.36 (1m) (a) Notwithstanding sub. (1) and except as provided pars. (b) and
14 (c), all of the following apply:

in effect on the effective date
of this subdivision. [LRB inserts date]

15 1. Beginning on July 1, 2016, the department may not enforce any of the rules
16 contained in s. DHS 124.40 or subch. II, III, or IV of ch. DHS 124, Wis. Adm. Code.

17 2. Notwithstanding sub. (1), the department shall, within the scope of the
18 department's rulemaking authority under sub. (1), promulgate rules to repeal and
19 recreate ch. DHS 124, Wis. Adm. Code.

20 (b) Paragraph (a) 1. does not apply to s. DHS 124.24 (3), Wis. Adm. Code.

21 (c) Paragraph (a) does not apply beginning on the date that a permanent rule
22 promulgated under ch. 227 that repeals and recreates ch. DHS 124 takes effect, as
23 provided in s. 227.22.

Wis. Adm. Code

SECTION 6. 50.36 (2) (a) of the statutes is amended to read:

50.36 (2) (a) ~~The Notwithstanding sub. (3L),~~ the department shall conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements under ch. 101 and with physical plant requirements under this chapter or under rules promulgated under this chapter.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109; 2007 a. 20, 104; 2009 a. 28, 42, 113, 180; 2011 a. 32; 2011 a. 260 s. 80.

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SECTION 7. 50.36 (3) (am) of the statutes is created to read:

50.36 (3) (am) A hospital may ~~afford~~ ^{grant} any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not prohibited under sub. (1) and are consistent with the practitioner's scope of practice.

INSERT 6-3

***NOTE: I kept this as paragraph (bm) so as not to suggest an effect on any pending investigations under ss. 448.02 (3) (a) or 448.675 (1) (a). Sections 448.02 (3) (a) or 448.675 (1) (a) must be amended regardless, due to the repeal of s. 50.36 (3) (c).

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no 1 evidence of current accreditation. Any evidence of accreditation and other accreditation-related

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SECTION 8. 50.36 (6m) (a) (intro.) of the statutes is amended to read:

50.36 (6m) (a) (intro.) The secretary or his or her designee may grant a variance to ~~any statute affecting hospitals or a rule~~ of the department affecting requirements for hospitals if all of the following apply: any

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109; 2007 a. 20, 104; 2009 a. 28, 42, 113, 180; 2011 a. 32; 2011 a. 260 s. 80.

1 **SECTION 9.** 50.36 (6m) (a) 1. of the statutes is repealed.

2 **SECTION 10.** 50.36 (6m) (a) 3. of the statutes is amended to read:

3 50.36 (6m) (a) 3. The secretary or his her designee determines that the variance
4 is necessary to protect the public health, safety, or welfare or to support the efficient
5 and economic operation of the hospital.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109; 2007 a. 20, 104; 2009 a. 28, 42, 113, 180; 2011 a. 32; 2011 a. 260 s. 80.

6 **SECTION 11.** 50.36 (6m) (b) of the statutes is amended to read:

7 50.36 (6m) (b) A variance granted under par. (a) ~~shall~~ may be for a stated term
8 ~~not to exceed 90 days, except that, If a variance is for a stated term,~~ the secretary
9 or his her designee may extend the variance upon request by the hospital if he or she
10 determines that an extension is necessary to protect the public health, safety, or
11 welfare or to support the efficient and economic operation of the hospital.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109; 2007 a. 20, 104; 2009 a. 28, 42, 113, 180; 2011 a. 32; 2011 a. 260 s. 80.

12 **SECTION 12.** 50.37 (intro.) of the statutes is amended to read:

13 **50.37 Notification to accrediting organization.** (intro.) The department
14 shall notify a ~~private~~ national accrediting organization that has accredited a hospital
15 and the board of governors of the injured patients and families compensation fund
16 under s. 619.04 (3) if the department has done any of the following:

History: 1989 a. 37; 2003 a. 111.

INSERT 8-8

17 **SECTION 13.** 50.39 (1) of the statutes is amended to read:

18 50.39 (1) ~~Sections 50.32 to 50.39 and the rules promulgated pertaining thereto~~
19 ~~shall~~ The requirements for hospitals apply to all facilities coming under the
20 definition of a "hospital" which are not specifically exempt by ss. 50.32 to 50.39.

History: 1971 c. 164; 1975 c. 39; 1975 c. 413 ss. 4, 18; 1975 c. 430 s. 80; Stats. 1975 s. 50.39; 1977 c. 203; 1979 c. 89, 221, 337, 355; 1985 a. 332 s. 251 (1); 1989 a. 31, 37, 107; 1991 a. 39; 1993 a. 27, 30, 107; 1995 a. 27, 77; 1997 a. 175; 1999 a. 9; 2005 a. 22, 344; 2007 a. 97; 2009 a. 113, 149; 2011 a. 258.

INSERT 9-5

X

1 **SECTION 14.** 323.19 (1) of the statutes is amended to read:

2 323.19 (1) The secretary of health services may grant a hospital a variance to
3 ~~a statute or rule affecting a requirement for hospitals in response to a disaster~~ as
4 provided in s. 50.36 (6m).



State of Wisconsin
2013 - 2014 LEGISLATURE

In 1-27-13
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LRB-2897/P2

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SV
PS: please
the 4-star notes
as indicated in the markup.
They will be "hidden" in the 1/1 version, so you will have to turn notes "on" in the header, delete the notes, then turn notes "off" in the header.
d-note

AN ACT to repeal 50.36 (3) (b), 50.36 (3) (c), 50.36 (3g) and 50.36 (6m) (a) 1.; to
renumber 146.37 (1) (a); to amend 50.35, 50.36 (1), 50.36 (2) (a), 50.36 (2) (b),
50.36 (3m), 50.36 (4), 50.36 (6m) (a) (intro.), 50.36 (6m) (a) 3., 50.36 (6m) (b),
50.37 (intro.), 50.37 (4), 50.39 (1), 146.37 (1g), 323.19 (1), 448.02 (3) (a), 448.02
(7) (a) and (b), 448.675 (1) (a) and 448.68 (1) and (2); and to create 50.33 (1c),
50.33 (3), 50.36 (1m), 50.36 (3) (am), 50.36 (3) (bm), 50.36 (3L) and 146.37 (1)
(ag) of the statutes; relating to: regulation of hospitals, granting rule-making
authority, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 50.33 (1c) of the statutes is created to read:

1 50.33 (1c) "Conditions for Medicare participation for hospitals" means the
2 conditions of participation specified under 42 CFR 482 or, with respect to critical
3 access hospitals, 42 CFR 485.

4 **SECTION 2.** 50.33 (3) of the statutes is created to read:

5 50.33 (3) "Requirements for hospitals" means all of the rules, standards, and
6 requirements described in or promulgated under ss. 50.32 to 50.39 that apply to
7 hospitals, including the standards described under s. 50.36 (1).

****NOTE: I created this defined term to use in certain places in the statutes to have
a consistent term that would capture all of the requirements that apply to hospitals,
including the COP, as the COP is not contained in the statutes or rules.

8 **SECTION 3.** 50.35 of the statutes is amended to read:

9 **50.35 Application and approval.** Application for approval to maintain a
10 hospital shall be made to the department on forms provided by the department. On
11 receipt of an application, the department shall, except as provided in s. 50.498, issue
12 a certificate of approval if the applicant and hospital facilities meet the requirements
13 ~~established by the department for hospitals~~. The department shall issue a single
14 certificate of approval for the University of Wisconsin Hospitals and Clinics
15 Authority that applies to all of the Authority's inpatient and outpatient hospital
16 facilities that meet the requirements ~~established by the department for hospitals~~
17 and for which the Authority requests approval. For a free-standing pediatric
18 teaching hospital, the department shall issue a single certificate of approval that
19 applies to all of the hospital's inpatient and outpatient hospital facilities that meet
20 the requirements ~~established by the department for hospitals~~ and for which the
21 hospital requests approval. Except as provided in s. 50.498, this approval shall be
22 in effect until, for just cause and in the manner herein prescribed, it is suspended or
23 revoked. The certificate of approval may be issued only for the premises and persons

1 or governmental unit named in the application and is not transferable or assignable.

2 The department shall withhold, suspend [§] or revoke approval for a failure to comply
3 with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise may not

4 withhold, suspend [§] or revoke approval unless for a substantial failure to comply with
5 ~~ss. 50.32 to 50.39 or the rules and standards adopted by the department the~~

6 requirements for hospitals after giving a reasonable notice, a fair hearing [§] and a
7 reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m)
8 shall be considered to be a substantial failure to comply under this section.

9 **SECTION 4.** 50.36 (1) of the statutes is amended to read:

10 50.36 (1) Beginning on July 1, 2016, except as otherwise provided under ss.
11 50.32 to 50.39, the department shall use and enforce the conditions for Medicare
12 participation for hospitals as the minimum standards that apply to hospitals. The
13 department shall interpret the conditions for Medicare participation for hospitals
14 using guidelines adopted by the federal centers for medicare and medicaid services,
15 unless the department determines that a different interpretation is reasonably
16 necessary to protect public health and safety or to support the efficient and economic
17 operation of hospitals. The department shall may promulgate, adopt, amend, and
18 enforce ~~such~~ additional rules and standards ~~for hospitals~~ for the construction,
19 maintenance, and operation of the hospitals ~~deemed that the department~~
20 determines are necessary to provide safe and adequate care and treatment of the
21 hospital patients in the hospitals and, to protect the health and safety of the patients
22 and employees; and nothing contained herein shall pertain to a person licensed to
23 practice medicine and surgery or dentistry, and to support the efficient and economic
24 operation of hospitals. The building codes and construction standards of the
25 department of safety and professional services shall apply to all hospitals ~~and the~~

1 ~~department may adopt additional construction codes and standards for hospitals,~~
2 ~~provided to the extent that they are not lower than the requirements of the~~
3 ~~department of safety and professional services incompatible with any building codes~~
4 ~~or construction standards required by the conditions for Medicare participation for~~
5 ~~hospitals.~~ Except for the construction codes and standards of the department of
6 safety and professional services and except as provided in s. 50.39 (3), the
7 department shall be the sole agency to adopt and enforce rules and standards
8 pertaining to hospitals.

****NOTE: I added "except as otherwise provided under ss. 50.32 to 50.39" here to
make clear that the rest of ss. 50.39 to 50.39 still do apply.

9 **SECTION 5.** 50.36 (1m) of the statutes is created to read:

10 50.36 (1m) (a) Notwithstanding sub. (1) and except as provided pars. (b) and
11 (c), all of the following apply:

12 1. Beginning on July 1, 2016, the department may not enforce any of the rules
13 contained in s. DHS 124.40 or subch. II, III, or IV of ch. DHS 124, Wis. Adm. Code,
14 in effect on the effective date of this subdivision [LRB inserts date].

15 2. The department shall, within the scope of the department's rule-making
16 authority under sub. (1), promulgate rules to repeal and recreate ch. DHS 124, Wis.
17 Adm. Code.

18 (b) Paragraph (a) 1. does not apply to s. DHS 124.24 (3), Wis. Adm. Code.

19 (c) Paragraph (a) does not apply beginning on the date that a permanent rule
20 promulgated under ch. 227 that repeals and recreates ch. DHS 124, Wis. Adm. Code,
21 takes effect as provided in s. 227.22.

22 **SECTION 6.** 50.36 (2) (a) of the statutes is amended to read:

1 50.36 (2) (a) ~~The Notwithstanding sub. (3L),~~ the department shall conduct plan
2 reviews of all capital construction and remodeling projects of hospitals to ensure that
3 the plans comply with ^{any applicable} building code requirements under ch. 101 and with ^{any} physical
4 plant requirements under this chapter or under rules promulgated under this
5 chapter.

6 **SECTION 7.** 50.36 (2) (b) of the statutes is amended to read:

7 50.36 (2) (b) The department shall promulgate rules that establish a fee
8 schedule for its services in conducting the plan reviews under par. (a). ~~The schedule~~
9 ~~established under these rules shall set fees for hospital plan reviews in amounts that~~
10 ~~are less than the sum of the amounts required on September 30, 1995, for fees under~~
11 ~~this subsection and for fees for examination of hospital plans under s. 101.19 (1) (a),~~
12 ~~1993 stats.~~

13 **SECTION 8.** 50.36 (3) (am) of the statutes is created to read:

14 50.36 (3) (am) A hospital may grant any practitioner the opportunity to be a
15 member of the hospital staff and obtain hospital staff privileges if the membership
16 or privileges are not prohibited under sub. (1) and are consistent with the
17 practitioner's scope of practice.

18 **SECTION 9.** 50.36 (3) (b) of the statutes is repealed. X X

19 **SECTION 10.** 50.36 (3) (bm) of the statutes is created to read: X

20 50.36 (3) (bm) 1. In this paragraph, "credentialing board" has the meaning
21 given in s. 440.01 (2) (bm).

22 2. If a hospital is required to report to the national practitioner data bank
23 operated by the federal department of health and human services a medical
24 malpractice payment or an adverse action concerning a hospital staff member and
25 the hospital staff member is licensed or certified by the medical examining board or

another credentialing board, the hospital shall report that payment or action to the credentialing board as soon as practicable.

****NOTE: I kept this as paragraph (bm) so as not to suggest an effect on any pending investigations under ss. 448.02 (3) (a) or 448.675 (1) (a). Sections 448.02 (3) (a) or 448.675 (1) (a) must be amended regardless, due to the repeal of s. 50.36 (3) (c).

SECTION 11. 50.36 (3) (c) of the statutes is repealed. X

SECTION 12. 50.36 (3g) of the statutes is repealed.

SECTION 13. 50.36 (3L) of the statutes is created to read:

50.36 (3L) A hospital accredited by an approved national accrediting organization pursuant to 42 USC 1395bb (a) (1) is exempt from routine inspections and investigations to determine compliance with and is considered to be in compliance with the requirements for hospitals. The department may inspect an accredited hospital to investigate a complaint or comply with the request of the federal centers for medicare and medicaid services, including a request to validate the findings of the accrediting organization.

SECTION 14. 50.36 (3m) of the statutes is amended to read:

50.36 (3m) The department shall require a hospital that is accredited as a hospital by a ~~private~~ national accrediting organization pursuant to 42 USC 1395bb (a) (1) to submit to the department ~~a copy of the summary accreditation recommendation and may require the hospital to submit to the department copies of all correspondence sent or received on or after August 30, 1989, including survey results, between the hospital and the accrediting organization. Accreditation letters, reports and related~~ evidence of current accreditation. Any evidence of accreditation and other accreditation-related correspondence or other materials submitted by or on behalf of a hospital to the department, except those submitted by a county mental health complex under s. 51.08, under this subsection are not subject

1 to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the
2 department.

3 **SECTION 15.** 50.36 (4) of the statutes is amended to read:

4 50.36 (4) The Except as provided in sub. (3L), the department shall make or
5 cause to be made such inspections and investigation, as are reasonably deemed
6 necessary to obtain compliance with the ~~rules and standards~~ requirements for
7 hospitals. It shall afford an opportunity for representatives of the hospitals to
8 consult with members of the staff of the department concerning compliance and
9 noncompliance with ~~rules and standards~~ the requirements for hospitals. If the
10 department takes enforcement action against a hospital for a violation of ss. 50.32
11 to 50.39, ~~or rules promulgated or standards adopted under ss. 50.32 to 50.39 the~~
12 requirements for hospitals, and the department subsequently conducts an on-site
13 inspection of the hospital to review the hospital's action to correct the violation, the
14 department may, unless the hospital is operated by the state, impose a \$200
15 inspection fee on the hospital.

16 **SECTION 16.** 50.36 (6m) (a) (intro.) of the statutes is amended to read:

17 50.36 (6m) (a) (intro.) The secretary or his or her designee may grant a variance
18 to ~~a statute affecting hospitals or a rule~~ ^a any of the department affecting
19 requirements for hospitals if all of the following apply:

20 **SECTION 17.** 50.36 (6m) (a) 1. of the statutes is repealed.

21 **SECTION 18.** 50.36 (6m) (a) 3. of the statutes is amended to read:

22 50.36 (6m) (a) 3. The secretary or his her designee determines that the variance
23 is necessary to protect the public health, safety, or welfare or to support the efficient
24 and economic operation of the hospital ^{or waiver} hospitals

25 **SECTION 19.** 50.36 (6m) (b) of the statutes is amended to read:

Ins
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50.36 (6m) (b) A variance ^{or waiver} granted under par. (a) ~~shall~~ ^{or waiver} may be for a stated term ~~not to exceed 90 days, except that. If a variance is for a stated term,~~ the secretary or his her designee may extend the variance ^{or waiver} upon request by the hospital if he or she determines that an extension is necessary to protect the public health, safety, or welfare or to support the efficient and economic operation of the hospital. ^{a hospitals}

SECTION 20. 50.37 (intro.) of the statutes is amended to read:

50.37 Notification to accrediting organization. (intro.) The department shall notify a ~~private~~ national accrediting organization that has accredited a hospital and the board of governors of the injured patients and families compensation fund under s. 619.04 (3) if the department has done any of the following:

SECTION 21. 50.37 (4) of the statutes is amended to read:

50.37 (4) Recommended to the federal ~~health care financing administration~~ centers for medicare and medicaid services that the hospital be decertified from the federal medicare program under 42 USC 1395 to 1395ccc or the federal medicaid program under 42 USC 1396 to 1396r-3 for failure to meet a condition of participation under the program.

SECTION 22. 50.39 (1) of the statutes is amended to read:

50.39 (1) ~~Sections 50.32 to 50.39 and the rules promulgated pertaining thereto shall~~ The requirements for hospitals apply to all facilities coming under the definition of a "hospital" which are not specifically exempt by ss. 50.32 to 50.39.

SECTION 23. 146.37 (1) (a) of the statutes is renumbered 146.37 (1) (ar).

SECTION 24. 146.37 (1) (ag) of the statutes is created to read:

146.37 (1) (ag) "Credentialing board" has the meaning given in s. 440.01 (2) (bm).

SECTION 25. 146.37 (1g) of the statutes is amended to read:

146.37 (1g) Except as provided in s. 153.76, no person acting in good faith who participates in the review or evaluation of the services of health care providers or facilities or the charges for such services conducted in connection with any program organized and operated to help improve the quality of health care, to avoid improper utilization of the services of health care providers or facilities or to determine the reasonable charges for such services, or who participates in the obtaining of health care information under subch. I of ch. 153, is liable for any civil damages as a result of any act or omission by such person in the course of such review or evaluation. Acts and omissions to which this subsection applies include, but are not limited to, acts or omissions by peer review committees or hospital governing bodies in censuring, reprimanding, limiting or revoking hospital staff privileges or notifying the medical examining board or, podiatry affiliated credentialing board, or other credentialing board under s. 50.36 or taking any other disciplinary action against a health care provider or facility and acts or omissions by a medical director in reviewing the performance of emergency medical technicians or ambulance service providers.

^a
SECTION 26. 323.19 (1) of the statutes is amended to read:

323.19 (1) The secretary of health services may grant a hospital a variance to a statute or rule affecting a requirement for hospitals in response to a disaster as provided in s. 50.36 (6m).

SECTION 27. 448.02 (3) (a) of the statutes is amended to read:

448.02 (3) (a) The board shall investigate allegations of unprofessional conduct and negligence in treatment by persons holding a license, certificate, or limited permit granted by the board. An allegation that a physician has violated s. 253.10 (3), 448.30 or 450.13 (2) or has failed to mail or present a medical certification required under s. 69.18 (2) within 21 days after the pronouncement of death of the

9
1 person who is the subject of the required certificate or that a physician has failed at
2 least 6 times within a 6-month period to mail or present a medical certificate
3 required under s. 69.18 (2) within 6 days after the pronouncement of death of the
4 person who is the subject of the required certificate is an allegation of unprofessional
5 conduct. Information contained in reports filed with the board under s. 49.45 (2) (a)
6 12r., ~~50.36 (3) (b)~~, 609.17, or 632.715, under s. 50.36 (3) (b), 2011 stats., or under 42
7 CFR 1001.2005, shall be investigated by the board. Information contained in a
8 report filed with the board under s. 655.045 (1), as created by 1985 Wisconsin Act 29,
9 which is not a finding of negligence or in a report filed with the board under s. 50.36
10 (3) (c), 2011 stats., may, within the discretion of the board, be used as the basis of an
11 investigation of a person named in the report. The board may require a person
12 holding a license, certificate, or limited permit to undergo and may consider the
13 results of one or more physical, mental, or professional competency examinations if
14 the board believes that the results of any such examinations may be useful to the
15 board in conducting its investigation.


16 **SECTION 28.** 448.02 (7) (a) and (b) of the statutes are amended to read:

17 448.02 (7) (a) Within 30 days of receipt of a report under s. 50.36 (3) (c), 2011
18 stats., the board shall notify the licensee, in writing, of the substance of the report.
19 The licensee and the licensee's authorized representative may examine the report
20 and may place into the record a statement, of reasonable length, of the licensee's view
21 of the correctness or relevance of any information in the report. The licensee may
22 institute an action in circuit court to amend or expunge any part of the licensee's
23 record related to the report.

24 (b) If the board determines that a report submitted under s. 50.36 (3) (c), 2011
25 stats., is without merit or that the licensee has sufficiently improved his or her

1 conduct, the board shall remove the report from the licensee's record. If no report
2 about a licensee is filed under s. 50.36 (3) (c), 2011 stats., for 2 consecutive years, the
3 licensee may petition the board to remove any prior reports, which did not result in
4 disciplinary action, from his or her record.

5 **SECTION 29.** 448.675 (1) (a) of the statutes is amended to read:

6 448.675 (1) (a) The affiliated credentialing board shall investigate allegations
7 of unprofessional conduct and negligence in treatment by a licensee. Information
8 contained in reports filed with the affiliated credentialing board under s. 49.45 (2)
9 (a) 12r, ~~50.36 (3) (b)~~, 609.17, or 632.715, under s. 50.36 (3) (b), 2011 stats., or under
10 42 CFR 1001.2005, shall be investigated by the affiliated credentialing board.
11 Information contained in a report filed with the affiliated credentialing board under
12 s. 50.36 (3) (c), 2011 stats., may, within the discretion of the affiliated credentialing
13 board, be used as the basis of an investigation of a person named in the report. The
14 affiliated credentialing board may require a licensee to undergo and may consider
15 the results of a physical, mental, or professional competency examination if the
16 affiliated credentialing board believes that the results of the examination may be
17 useful to the affiliated credentialing board in conducting its investigation. 

18 **SECTION 30.** 448.68 (1) and (2) of the statutes are amended to read:

19 448.68 (1) Within 30 days after receipt of a report under s. 50.36 (3) (c), 2011
20 stats., the affiliated credentialing board shall notify the licensee, in writing, of the
21 substance of the report. The licensee and the licensee's authorized representative
22 may examine the report and may place into the record a statement, of reasonable
23 length, of the licensee's view of the correctness or relevance of any information in the
24 report. The licensee may institute an action in circuit court to amend or expunge any
25 part of the licensee's record related to the report.

(2) If the affiliated credentialing board determines that a report submitted under s. 50.36 (3) (c), 2011 stats., is without merit or that the licensee has sufficiently improved his or her conduct, the affiliated credentialing board shall remove the report from the licensee's record. If no report about a licensee is filed under s. 50.36 (3) (c), 2011 stats. for 2 consecutive years, the licensee may petition the affiliated credentialing board to remove any prior reports, which did not result in disciplinary action, from his or her record.

(END)

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**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2897/Pins
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INSERT ANALYSIS

Rules and standards that apply to hospitals

Under current state law, the Department of Health Services (DHS) must promulgate, adopt, amend, and enforce rules and standards for the construction, maintenance, and operation of hospitals that are deemed necessary to provide safe and adequate care and treatment of the patients in hospitals and to protect the health and safety of hospital patients and employees. On receipt of an application, DHS must issue a certificate of approval if the applicant and hospital facilities meet the requirements established by DHS. *to maintain a hospital*

Under current federal law, a hospital participating in the federal Medicare program must satisfy certain requirements, including requirements set out in federal regulations promulgated by the federal Centers for Medicare and Medicaid Services in the United States Department of Health and Human Services (CMS). These federal regulations are known as the federal conditions for Medicare participation for hospitals (COP). Certain hospitals designated as "critical access hospitals" pursuant to federal law operate under a different COP.

This bill generally provides that, effective July 1, 2016:

1. DHS must use and enforce the COPs as the minimum standards that apply to hospitals. DHS must interpret the COPs using guidelines adopted by CMS, unless DHS determines that a different interpretation is reasonably necessary to protect public health and safety or to support the efficient and economic operation of hospitals.

2. DHS may not, except as described below, enforce certain administrative rules pertaining to hospitals that were promulgated by DHS that are currently in effect, including rules pertaining to management of hospitals, hospital medical staff, and required services in hospitals.

3. DHS must, within the scope of its rulemaking authority, promulgate rules to ~~revise~~ its current rules pertaining to hospitals. Upon promulgation of a rule to ~~revise~~ its current rules pertaining to hospitals, the prohibition against enforcement of DHS's rules no longer applies.

The bill also modifies DHS's authority regarding rules and standards pertaining to hospitals as follows: 1) expanding DHS's authority so that it may also promulgate, adopt, amend, and enforce rules and standards to support the efficient and economic operation of hospitals; and 2) eliminating a restriction providing that nothing in the rules or standards may pertain to a person licensed to practice medicine and surgery or dentistry.

Other changes to laws regulating hospitals

The bill makes other changes to the laws regulating hospitals. Significant changes to current law in the bill include the following:

1. Current law provides that the building codes and construction standards of the Department of Safety and Professional Services (DSPS) apply to all hospitals and that DHS may adopt additional construction codes and standards for hospitals, provided that they are not lower than the requirements of DSPS.

*repeal and
recreate*

*repeal
and
recreate*

* The bill eliminates the authority of DHS to adopt additional construction codes and standards for hospitals. The bill retains the provision that provides that the building codes and construction standards of DSPS apply to all hospitals, but provides that they apply only to the extent that they are not incompatible with any building codes or construction standards required by the COPs ☉

2. Under current law, DHS must conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements in the laws administered by DSPS and with physical plant requirements for hospitals. Also under current law, DHS must promulgate rules that establish a fee schedule for its services in conducting the plan reviews described above. The schedule may not, however, set the fees at levels that are higher than certain specified amounts.

This bill retains the requirement that DHS conduct plan reviews of all capital construction and remodeling projects of hospitals and retains the authority of DHS to promulgate rules establishing a fee schedule for the plan reviews, but eliminates the restrictions on amounts in the fee schedule.

* 3. Current DHS rules require the governing body of a hospital to establish a policy that requires ~~that~~ every patient to be under the care of a licensed physician, dentist, or podiatrist. The policy must, under those rules, provide that a person may be admitted to a hospital only on the recommendation of a physician, dentist, or podiatrist, with a physician designated to be responsible for the medical aspects of care.

Also, under current law, a hospital that admits patients for treatment of mental illness may grant to a psychologist who is listed or eligible to be listed in the National Register of Health Services Providers in Psychology or who is certified by the American Board of Professional Psychology an opportunity to obtain hospital staff privileges to admit, treat, and discharge patients. If a hospital grants a psychologist hospital staff privileges, the psychologist or the hospital must, prior to or at the time of hospital admission of a patient, identify an appropriate physician with admitting privileges at the hospital who shall be responsible for the medical evaluation and medical management of the patient for the duration of his or her hospitalization.

The bill provides that a hospital may afford any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not otherwise prohibited and the membership or privileges are consistent with the practitioner's scope of practice. ✓

* The bill repeals the provisions in current law that specifically address the granting of hospital staff privileges to psychologists. ✓

4. Under current law, the ~~Secretary of Health Services~~ or his or her designee (secretary) may grant a variance to a statute affecting hospitals or a rule of DHS affecting hospitals if all of the following apply: 1) the secretary determines that a disaster, as defined under the emergency management law, has occurred; 2) a hospital has requested the variance; and 3) the secretary determines that the variance is necessary to protect the public health, safety, or welfare. Such a variance must be for a stated term not to exceed 90 days, except that the secretary may extend

the variance upon request by the hospital if the secretary determines that an extension is necessary to protect the public health, safety, or welfare.

This bill makes the following changes with respect to variances affecting hospitals: 1) eliminates the requirement that, in order to grant a variance, the secretary determine that a disaster has occurred; 2) eliminates the requirement that a variance be for a limited term unless extended; 3) also allows a variance to be granted for the purpose of supporting the efficient and economic operation of hospitals; 4) expands the scope of the secretary's authority to any other requirement for hospitals, such as the COP; and 5) allows the secretary to grant a waiver, in addition to ~~granting~~ a variance, from the requirements for hospitals.

5. The bill provides that a hospital accredited by an approved national accrediting organization is exempt from routine inspections and investigations to determine compliance with ~~and~~ and is considered to be in compliance with ~~the~~ requirements for hospitals. The bill provides, however, that this exemption does not extend to plan reviews conducted by DHS of capital construction and remodeling projects of hospitals, and provides that DHS may inspect an accredited hospital to investigate a complaint or comply with a request by CMS, including a request to validate the findings of the accrediting organization.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 7-20

- 1 **SECTION 1.** 50.36 (6m) (a) 2. of the statutes is amended to read:
- 2 50.36 (6m) (a) 2. A hospital has requested the variance or waiver.

History: 1971 c. 211; 1975 c. 383 s. 4; 1975 c. 413 ss. 4, 18; 1975 c. 421; Stats. 1975 s. 50.36; 1977 c. 29; 1979 c. 34; 1981 c. 135; 1985 a. 340; 1989 a. 37; 1991 a. 129; 1993 a. 16, 30, 270; 1995 a. 27 ss. 3245, 3246, 9116 (5); 1997 a. 175; 1999 a. 9; 2001 a. 109; 2007 a. 20, 104; 2009 a. 28, 42, 113, 180; 2011 a. 32; 2011 a. 260 s. 80.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2897/1dn

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Date

of
As discussed, I eliminated treatments of s. 50.36 (3) (b) to (c) and added in the concept of "waiver" to s. 50.36 (6m), to match current rules. In amending s. 50.36 (6m), I also changed the references to "the efficient and economic operation of the hospital" to "hospitals" (plural), because the singular implied that variances would be for particular hospitals and I believe that we discussed that these would typically be general variances or waivers that would not be limited to specific facilities, which would be granted by rule through the rule-making process as required by s. 227.10 (1), stats. Finally, I made a couple minor changes to s. 50.36 (2) (a), mainly because under s. 50.36 (1), as amended by the bill, the DSPS building codes apply only to the extent that they are not incompatible with the COP. This version contains no other changes to the previous, /P2 version.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2897/1dn

MED:cjs:jm

January 28, 2014

As discussed, I eliminated treatments of s. 50.36 (3) (b) to (c) and added in the concept of “waiver” to s. 50.36 (6m), to match current rules. In amending s. 50.36 (6m), I also changed the references to “the efficient and economic operation of the hospital” to “hospitals” (plural), because the singular implied that variances would be for particular hospitals and I believe that we discussed that these would typically be general variances or waivers that would not be limited to specific facilities, which would be granted by rule through the rule-making process as required by s. 227.10 (1), stats. Finally, I made a couple of minor changes to s. 50.36 (2) (a), mainly because under s. 50.36 (1), as amended by the bill, the DSPS building codes apply only to the extent that they are not incompatible with the COP. This version contains no other changes to the previous, /P2 version.

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Stays

2013 BILL

Insert

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Denote

1 AN ACT *to repeal* 50.36 (3g) and 50.36 (6m) (a) 1.; *to amend* 50.35, 50.36 (1),
2 50.36 (2) (a), 50.36 (2) (b), 50.36 (3m), 50.36 (4), 50.36 (6m) (a) (intro.), 50.36
3 (6m) (a) 2., 50.36 (6m) (a) 3., 50.36 (6m) (b), 50.37 (intro.), 50.37 (4), 50.39 (1)
4 and 323.19 (1); and *to create* 50.33 (1c), 50.33 (3), 50.36 (1m), 50.36 (3) (am) and
5 50.36 (3L) of the statutes; **relating to:** regulation of hospitals, granting
6 rule-making authority, and requiring the exercise of rule-making authority.

Analysis by the Legislative Reference Bureau

Rules and standards that apply to hospitals

Under current state law, the Department of Health Services (DHS) must promulgate, adopt, amend, and enforce rules and standards for the construction, maintenance, and operation of hospitals that are deemed necessary to provide safe and adequate care and treatment of the patients in hospitals and to protect the health and safety of hospital patients and employees. On receipt of an application, DHS must issue a certificate of approval to maintain a hospital if the applicant and hospital facilities meet the requirements established by DHS.

Under current federal law, a hospital participating in the federal Medicare program must satisfy certain requirements, including requirements set out in federal regulations promulgated by the federal Centers for Medicare and Medicaid Services in the United States Department of Health and Human Services (CMS).

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These federal regulations are known as the federal conditions for Medicare participation for hospitals (COP). Certain hospitals designated as "critical access hospitals" pursuant to federal law operate under a different COP.

This bill generally provides that, effective July 1, 2016:

1. DHS must use and enforce the COPs as the minimum standards that apply to hospitals. DHS must interpret the COPs using guidelines adopted by CMS, unless DHS determines that a different interpretation is reasonably necessary to protect public health and safety or to support the efficient and economic operation of hospitals.

2. DHS may not, except as described below, enforce certain administrative rules pertaining to hospitals that were promulgated by DHS that are currently in effect, including rules pertaining to management of hospitals, hospital medical staff, and required services in hospitals.

3. DHS must, within the scope of its rulemaking authority, promulgate rules to repeal and recreate its current rules pertaining to hospitals. Upon promulgation of a rule to repeal and recreate its current rules pertaining to hospitals, the prohibition against enforcement of DHS's rules no longer applies.

The bill also modifies DHS's authority regarding rules and standards pertaining to hospitals as follows: 1) expanding DHS's authority so that it may also promulgate, adopt, amend, and enforce rules and standards to support the efficient and economic operation of hospitals; and 2) eliminating a restriction providing that nothing in the rules or standards may pertain to a person licensed to practice medicine and surgery or dentistry.

Other changes to laws regulating hospitals

The bill makes other changes to the laws regulating hospitals. Significant changes to current law in the bill include the following:

1. Current law provides that the building codes and construction standards of the Department of Safety and Professional Services (DSPS) apply to all hospitals and that DHS may adopt additional construction codes and standards for hospitals, provided that they are not lower than the requirements of DSPS.

The bill eliminates the authority of DHS to adopt additional construction codes and standards for hospitals. The bill retains the provision that provides that the building codes and construction standards of DSPS apply to all hospitals, but provides that they apply only to the extent that they are not incompatible with any building codes or construction standards required by the COPs.

2. Under current law, DHS must conduct plan reviews of all capital construction and remodeling projects of hospitals to ensure that the plans comply with building code requirements in the laws administered by DSPS and with physical plant requirements for hospitals. Also under current law, DHS must promulgate rules that establish a fee schedule for its services in conducting the plan reviews described above. The schedule may not, however, set the fees at levels that are higher than certain specified amounts.

This bill retains the requirement that DHS conduct plan reviews of all capital construction and remodeling projects of hospitals and retains the authority of DHS

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to promulgate rules establishing a fee schedule for the plan reviews, but eliminates the restrictions on amounts in the fee schedule.

3. Current DHS rules require the governing body of a hospital to establish a policy that requires every patient to be under the care of a licensed physician, dentist, or podiatrist. The policy must, under those rules, provide that a person may be admitted to a hospital only on the recommendation of a physician, dentist, or podiatrist, with a physician designated to be responsible for the medical aspects of care.

Also, under current law, a hospital that admits patients for treatment of mental illness may grant to a psychologist who is listed or eligible to be listed in the National Register of Health Services Providers in Psychology or who is certified by the American Board of Professional Psychology an opportunity to obtain hospital staff privileges to admit, treat, and discharge patients. If a hospital grants a psychologist hospital staff privileges, the psychologist or the hospital must, prior to or at the time of hospital admission of a patient, identify an appropriate physician with admitting privileges at the hospital who shall be responsible for the medical evaluation and medical management of the patient for the duration of his or her hospitalization.

The bill provides that a hospital may afford any practitioner the opportunity to be a member of the hospital staff and obtain hospital staff privileges if the membership or privileges are not otherwise prohibited and the membership or privileges are consistent with the practitioner's scope of practice.

The bill repeals the provisions in current law that specifically address the granting of hospital staff privileges to psychologists.

4. Under current law, the secretary of health services or his or her designee (secretary) may grant a variance to a statute affecting hospitals or a rule of DHS affecting hospitals if all of the following apply: 1) the secretary determines that a disaster, as defined under the emergency management law, has occurred; 2) a hospital has requested the variance; and 3) the secretary determines that the variance is necessary to protect the public health, safety, or welfare. Such a variance must be for a stated term not to exceed 90 days, except that the secretary may extend the variance upon request by the hospital if the secretary determines that an extension is necessary to protect the public health, safety, or welfare.

This bill makes the following changes with respect to variances affecting hospitals: 1) eliminates the requirement that, in order to grant a variance, the secretary determine that a disaster has occurred; 2) eliminates the requirement that a variance be for a limited term unless extended; 3) also allows a variance to be granted for the purpose of supporting the efficient and economic operation of hospitals; 4) expands the scope of the secretary's authority to any other requirement for hospitals, such as the COP; and 5) allows the secretary to grant a waiver, in addition to granting a variance, from the requirements for hospitals.

5. The bill provides that a hospital accredited by an approved national accrediting organization is exempt from routine inspections and investigations to determine compliance with, and is considered to be in compliance with, the requirements for hospitals. The bill provides, however, that this exemption does not extend to plan reviews conducted by DHS of capital construction and remodeling

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projects of hospitals, and provides that DHS may inspect an accredited hospital to investigate a complaint or comply with a request by CMS, including a request to validate the findings of the accrediting organization.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 50.33 (1c) of the statutes is created to read:

2 50.33 (1c) “Conditions for Medicare participation for hospitals” means the
3 conditions of participation specified under 42 CFR 482 or, with respect to critical
4 access hospitals, 42 CFR 485.

5 **SECTION 2.** 50.33 (3) of the statutes is created to read:

6 50.33 (3) “Requirements for hospitals” means all of the rules, standards, and
7 requirements described in or promulgated under ss. 50.32 to 50.39 that apply to
8 hospitals, including the standards described under s. 50.36 (1).

9 **SECTION 3.** 50.35 of the statutes is amended to read:

10 **50.35 Application and approval.** Application for approval to maintain a
11 hospital shall be made to the department on forms provided by the department. On
12 receipt of an application, the department shall, except as provided in s. 50.498, issue
13 a certificate of approval if the applicant and hospital facilities meet the requirements
14 ~~established by the department for hospitals~~. The department shall issue a single
15 certificate of approval for the University of Wisconsin Hospitals and Clinics
16 Authority that applies to all of the Authority’s inpatient and outpatient hospital
17 facilities that meet the requirements ~~established by the department for hospitals~~
18 and for which the Authority requests approval. For a free-standing pediatric
19 teaching hospital, the department shall issue a single certificate of approval that

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1 applies to all of the hospital's inpatient and outpatient hospital facilities that meet
2 the requirements ~~established by the department~~ for hospitals and for which the
3 hospital requests approval. Except as provided in s. 50.498, this approval shall be
4 in effect until, for just cause and in the manner herein prescribed, it is suspended or
5 revoked. The certificate of approval may be issued only for the premises and persons
6 or governmental unit named in the application and is not transferable or assignable.
7 The department shall withhold, suspend, or revoke approval for a failure to comply
8 with s. 165.40 (6) (a) 1. or 2., but, except as provided in s. 50.498, otherwise may not
9 withhold, suspend, or revoke approval unless for a substantial failure to comply with
10 ~~ss. 50.32 to 50.39 or the rules and standards adopted by the department~~ the
11 requirements for hospitals after giving a reasonable notice, a fair hearing, and a
12 reasonable opportunity to comply. Failure by a hospital to comply with s. 50.36 (3m)
13 shall be considered to be a substantial failure to comply under this section.

14 **SECTION 4.** 50.36 (1) of the statutes is amended to read:

15 50.36 (1) Beginning on July 1, 2016, except as otherwise provided under ss.
16 50.32 to 50.39, the department shall use and enforce the conditions for Medicare
17 participation for hospitals as the minimum standards that apply to hospitals. The
18 department shall interpret the conditions for Medicare participation for hospitals
19 using guidelines adopted by the federal centers for medicare and medicaid services,
20 unless the department determines that a different interpretation is reasonably
21 necessary to protect public health and safety or to support the efficient and economic
22 operation of hospitals. The department shall may promulgate, adopt, amend, and
23 enforce ~~such~~ additional rules and standards ~~for hospitals~~ for the construction,
24 maintenance, and operation of ~~the hospitals deemed that the department~~
25 determines are necessary to provide safe and adequate care and treatment of the

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1 ~~hospital patients in the hospitals and~~ to protect the health and safety of the patients
2 and employees; and ~~nothing contained herein shall pertain to a person licensed to~~
3 ~~practice medicine and surgery or dentistry, and to support the efficient and economic~~
4 ~~operation of hospitals.~~ The building codes and construction standards of the
5 department of safety and professional services shall apply to all hospitals and the
6 department may adopt additional construction codes and standards for hospitals,
7 provided to the extent that they are not lower than the requirements of the
8 department of safety and professional services incompatible with any building codes
9 or construction standards required by the conditions for Medicare participation for
10 hospitals. Except for the construction codes and standards of the department of
11 safety and professional services and except as provided in s. 50.39 (3), the
12 department shall be the sole agency to adopt and enforce rules and standards
13 pertaining to hospitals.

14 SECTION 5. 50.36 (1m) of the statutes is created to read:

15 50.36 (1m) (a) Notwithstanding sub. (1) and except as provided pars. (b) and
16 (c), all of the following apply:

17 1. Beginning on July 1, 2016, the department may not enforce any of the rules
18 contained in s. DHS 124.40 or subch. II, III, or IV of ch. DHS 124, Wis. Adm. Code,
19 in effect on the effective date of this subdivision [LRB inserts date].

20 2. The department shall, within the scope of the department's rule-making
21 authority under sub. (1), promulgate rules to repeal and recreate ch. DHS 124, Wis.
22 Adm. Code.

23 (b) Paragraph (a) 1. does not apply to s. DHS 124.24 (3), Wis. Adm. Code.

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1 (c) Paragraph (a) does not apply beginning on the date that a permanent rule
2 promulgated under ch. 227 that repeals and recreates ch. DHS 124, Wis. Adm. Code,
3 takes effect as provided in s. 227.22.

4 **SECTION 6.** 50.36 (2) (a) of the statutes is amended to read:

5 50.36 (2) (a) The Notwithstanding sub. (3L), the department shall conduct plan
6 reviews of all capital construction and remodeling projects of hospitals to ensure that
7 the plans comply with any applicable building code requirements under ch. 101 and
8 with any physical plant requirements under this chapter or under rules promulgated
9 under this chapter.

10 **SECTION 7.** 50.36 (2) (b) of the statutes is amended to read:

11 50.36 (2) (b) The department shall promulgate rules that establish a fee
12 schedule for its services in conducting the plan reviews under par. (a). ~~The schedule~~
13 ~~established under these rules shall set fees for hospital plan reviews in amounts that~~
14 ~~are less than the sum of the amounts required on September 30, 1995, for fees under~~
15 ~~this subsection and for fees for examination of hospital plans under s. 101.19 (1) (a),~~
16 ~~1993 stats.~~

17 **SECTION 8.** 50.36 (3) (am) of the statutes is created to read:

18 50.36 (3) (am) A hospital may grant any practitioner the opportunity to be a
19 member of the hospital staff and obtain hospital staff privileges if the membership
20 or privileges are not prohibited under sub. (1) and are consistent with the
21 practitioner's scope of practice.

22 **SECTION 9.** 50.36 (3g) of the statutes is repealed.

23 **SECTION 10.** 50.36 (3L) of the statutes is created to read:

24 50.36 (3L) A hospital accredited by an approved national accrediting
25 organization pursuant to 42 USC 1395bb (a) (1) is exempt from routine inspections

BILL**SECTION 10**

1 and investigations to determine compliance with and is considered to be in
2 compliance with the requirements for hospitals. The department may inspect an
3 accredited hospital to investigate a complaint or comply with the request of the
4 federal centers for medicare and medicaid services, including a request to validate
5 the findings of the accrediting organization.

6 **SECTION 11.** 50.36 (3m) of the statutes is amended to read:

7 50.36 (3m) The department shall require a hospital that is accredited as a
8 hospital by a ~~private~~ national accrediting organization pursuant to 42 USC 1395bb
9 (a) (1) to submit to the department ~~a copy of the summary accreditation~~
10 ~~recommendation and may require the hospital to submit to the department copies~~
11 ~~of all correspondence sent or received on or after August 30, 1989, including survey~~
12 ~~results, between the hospital and the accrediting organization. Accreditation~~
13 ~~letters, reports and related~~ evidence of current accreditation. Any evidence of
14 accreditation and other accreditation-related correspondence or other materials
15 submitted by or on behalf of a hospital to the department, except those submitted by
16 a county mental health complex under s. 51.08, under this subsection are not subject
17 to inspection, copying, or receipt under s. 19.35 (1) and may not be released by the
18 department.

19 **SECTION 12.** 50.36 (4) of the statutes is amended to read:

20 50.36 (4) ~~The~~ Except as provided in sub. (3L), the department shall make or
21 cause to be made such inspections and investigation, as are reasonably deemed
22 necessary to obtain compliance with the ~~rules and standards~~ requirements for
23 hospitals. It shall afford an opportunity for representatives of the hospitals to
24 consult with members of the staff of the department concerning compliance and
25 noncompliance with ~~rules and standards~~ the requirements for hospitals. If the

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1 department takes enforcement action against a hospital for a violation of ss. ~~50.32~~
2 ~~to 50.39, or rules promulgated or standards adopted under ss. 50.32 to 50.39 the~~
3 requirements for hospitals, and the department subsequently conducts an on-site
4 inspection of the hospital to review the hospital's action to correct the violation, the
5 department may, unless the hospital is operated by the state, impose a \$200
6 inspection fee on the hospital.

7 **SECTION 13.** 50.36 (6m) (a) (intro.) of the statutes is amended to read:

8 50.36 (6m) (a) (intro.) The secretary or his or her designee may grant a variance
9 to ~~a statute affecting hospitals or a rule~~ or a waiver from any of the department
10 affecting requirements for hospitals if all of the following apply:

11 **SECTION 14.** 50.36 (6m) (a) 1. of the statutes is repealed.

12 **SECTION 15.** 50.36 (6m) (a) 2. of the statutes is amended to read:

13 50.36 (6m) (a) 2. A hospital has requested the variance or waiver.

14 **SECTION 16.** 50.36 (6m) (a) 3. of the statutes is amended to read:

15 50.36 (6m) (a) 3. The secretary or his her designee determines that the variance
16 or waiver is necessary to protect the public health, safety, or welfare or to support the
17 efficient and economic operation of ^{the} hospitals.

18 **SECTION 17.** 50.36 (6m) (b) of the statutes is amended to read:

19 50.36 (6m) (b) A variance or waiver granted under par. (a) shall may be for a
20 stated term ~~not to exceed 90 days, except that. If a variance or waiver is for a stated~~
21 term, the secretary or his her designee may extend the variance or waiver upon
22 request by the hospital if he or she determines that an extension is necessary to
23 protect the public health, safety, or welfare or to support the efficient and economic
24 operation of ^{the} hospitals.

25 **SECTION 18.** 50.37 (intro.) of the statutes is amended to read:

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50.37 Notification to accrediting organization. (intro.) The department shall notify a ~~private~~ national accrediting organization that has accredited a hospital and the board of governors of the injured patients and families compensation fund under s. 619.04 (3) if the department has done any of the following:

SECTION 19. 50.37 (4) of the statutes is amended to read:

50.37 (4) Recommended to the federal health care financing administration centers for medicare and medicaid services that the hospital be decertified from the federal medicare program under 42 USC 1395 to 1395ccc or the federal medicaid program under 42 USC 1396 to 1396r-3 for failure to meet a condition of participation under the program.

SECTION 20. 50.39 (1) of the statutes is amended to read:

50.39 (1) ~~Sections 50.32 to 50.39 and the rules promulgated pertaining thereto~~
~~shall~~ The requirements for hospitals apply to all facilities coming under the
definition of a “hospital” which are not specifically exempt by ss. 50.32 to 50.39.

SECTION 21. 323.19 (1) of the statutes is amended to read:

323.19 (1) The secretary of health services may grant a hospital a variance to ~~a statute or rule affecting~~ or a waiver from a requirement for hospitals in response to a disaster as provided in s. 50.36 (6m).

(END)

✓-note

**2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2897/2ins
MED:cjs:rs

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The bill retains the provision providing that the building codes and construction standards of DSPS apply to all hospitals, but provides that they apply only to the extent that they are not incompatible with any building codes or construction standards required by the COPs. The bill retains the authority for DHS to promulgate and adopt rules and standards for the construction of hospitals, but eliminates the specific restriction on that authority described above.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2897/2dn

MED:cjs:rs

start

- late -

does the following: 1.

This version corrects what was somewhat of a misstatement brought to my attention in the analysis for the /1 version regarding DHS's authority to adopt construction standards for hospitals. I revised the analysis slightly to reflect the fact that, while the bill eliminates certain language restricting DHS's authority to adopt construction codes and standards, it retains the general language allowing DHS to adopt rules for the construction of hospitals. No changes were made to the text of the bill in this version.

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2. Makes ^{other} requested changes ^{including} regarding DHS's authority to promulgate rules and interpret the conditions of participation and DHS's authority to grant waivers and variances.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2897/2dn
MED:cjs:jm

January 29, 2014

This version does the following:

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Parisi, Lori

From: Potts, Crystal
Sent: Wednesday, January 29, 2014 3:32 PM
To: LRB.Legal
Subject: Draft Review: LRB -2897/2 Topic: Hospital regulation

Please Jacket LRB -2897/2 for the ASSEMBLY.